

ORDINANCE NO. 09-14

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 18 ENTITLED "BUSINESSES" OF THE CODE OF ORDINANCES AND IN PARTICULAR, ARTICLE III ENTITLED "AMUSEMENT MACHINES", BY REVISING HIALEAH CODE §18-61 ENTITLED "DEFINITIONS"; REVISING HIALEAH CODE §18-63 ENTITLED "AMUSEMENT CENTERS" TO ELIMINATE DISTANCE SEPARATION REQUIREMENT OF 1,500 FEET BUT TO LIMIT THE NUMBER OF AMUSEMENT CENTERS TO ONE FOR EACH SHOPPING CENTER; REVISING HIALEAH CODE §18-65 ENTITLED "LICENSING SYSTEM" TO EQUATE ONE SCREEN AS ONE MACHINE FOR PURPOSES OF LICENSE FEES AND TO PROHIBIT THE USE OF SCHEMES OR ARTIFICES TO CIRCUMVENT THE INTENT OF THIS SUBSECTION; BY ELIMINATING HIALEAH CODE §18-70 ENTITLED "PRIZE RESTRICTIONS" AS DUPLICITOUS OF THE REVISIONS TO THE DEFINITIONS MADE HEREIN; BY REVISING HIALEAH CODE §18-73 ENTITLED "PAYMENT OF CERTIFICATE OF AUTHORIZATION FEE, PAYMENT AND PERFORMANCE BOND; CRIMINAL BACKGROUND CHECK AND PROOF OF CORPORATE GOOD STANDING FOR MACHINE OWNER OR SUPPLIER HEREUNDER OF TYPE II AMUSEMENT MACHINES" TO EXEMPT BONA FIDE AMUSEMENT CENTERS FROM THE BOND OR SECURITY REQUIREMENT THEREIN AND PROVIDE A CREDIT TOWARD THE AUTHORIZATION FEE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of health, safety and general welfare of the community and the residents of the City of Hialeah to regulate the operation of coin-operated and currency-operated amusement machines within the City; and

WHEREAS, the purpose and intent of this ordinance is to clarify the definitions of Type I and Type II amusement machines making it conform with State law, to eliminate an unintended exception and to create a distinction between amusement games whose content, theme, graphics, or design encourage gambling or heighten a propensity to gamble; and

WHEREAS, the purpose and intent of this ordinance is to tighten the definition of an amusement machine by equating one screen as one machine in light of the attempts by amusement machine owners and/or operators to circumvent the spirit and intent of the law requiring that each amusement machine be licensed through schemes or artifices such as the

encasement of multiple screens and/or the operation of various screens powered by one source or cord and/or operated through the use of one bill acceptor; and

WHEREAS, the purpose and intent of this ordinance is to make changes to the regulations applicable to bona fide amusement centers to correspond with the implementation of a new fee schedule.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 18 entitled "Businesses" of the Code of Ordinances of the City of Hialeah, Florida, particularly Article III. Coin- or Currency-Operated Machines, is hereby amended to read as follows:

Chapter 18

BUSINESSES

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**ARTICLE III.
AMUSEMENT MACHINES**

Sec. 18-61. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amusement center means a place of business having at least 50 or more amusement machines that are operated for the entertainment of the general public as a bona fide amusement facility.

Operator means any person who shall own, operate or control either a type I or type II amusement machines.

Type I Amusement machines: Any machine, contrivance or device that provides for entertainment or amusement of any kind and that is set in motion or is permitted to function upon payment of a fee, money, compensation or an exchange of anything of value ~~except as allowed by F.S. § 849.161(1)(a)1-~~, or is permitted to function by insertion of a coin, slug, token, credit card or paper currency ~~that provides for entertainment or amusement of any kind, and~~

that by application of skill, may entitle the person playing or operating the machine to receive points or coupons that may be exchanged for merchandise only, limited to noncash prizes, toys, or novelties, excluding cash, alcoholic beverages, beer or wine, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played, or may entitle the person playing or operating the machine to replay the game or device at no additional cost if the game or device can accumulate or react to no more than 15 replays, can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay, and can make no permanent record, directly or indirectly, of free replays. This definition excludes pinball machines, pool or billiard tables, vending machines, laundry machines, soda machines, kiddie rides, and automatic music machines.

Type II amusement machine means a Type I machine whose game content, theme, design, or graphics ~~that depicts an activity normally perceived as being an activity primarily for the purposes of parimutuel wagering and/or available primarily in a casino setting (i.e. horse racing, dog racing, poker, roulette, slot machines, etc.) or depicting, exhibiting, illustrating, describing or relating to sexual conduct or specified anatomical areas as defined in section 98-1796 of the Code, or whose game content, theme, design, or graphics simulates slot machines.~~

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Sec. 18-63. Amusement centers and bingo parlors.

All amusement centers shall be located in C-2 liberal retail commercial locations (the entire shopping center) that have floor areas in excess of 75,000 square feet. There shall be only one amusement center in each shopping center meeting the area requirement. ~~No amusement center will be permitted within a distance of 1,500 feet from another center.~~ Amusement centers and bingo parlors are exempted from the limitation on the number of type II amusement machines allowed at any one location; provided, however, that the amusement center separates the location of type II amusement machines from type I amusement machines on the premises.

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Sec. 18-65. Licensing system.

One license for every machine shall be issued to a business owner for each location and if the business owner and property owner is not the same person, the business owner shall provide written notice to the property owner of its intention to operate the machine for that location city prior to the issuance of the license. For purposes of this subsection, each individual screen shall constitute one machine regardless of whether the screen is encased in a console, cabinet, or other fixture with other screens which receive electric power through one source or cord, and/or are set into motion or permitted to function through the use of one bill acceptor, where the player may select a game at any one screen such that at any one time you may have more than one player playing or operating games at different screens independently from the others. No artifice or scheme shall be used to circumvent the intent of this subsection. All licenses must be displayed within public view and access in area within 5 feet from the physical site of the machine. Amusement machine licenses are not transferable. If an amusement machine is relocated, then a new license shall be obtained. The name, address and telephone number of the machine owner must be attached to the front of the machine in a location easily read by machine users with the size of lettering equal to or greater than 12-point type. Prior to issuing a machine city license (business tax receipt) to a business owner, the business owner must present proof a state amusement machine certificate from the department of revenue and an applicable county business tax receipt.

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~~Sec. 18-70. Prize restrictions.~~

~~It shall be unlawful for any person to operate a type I or type II amusement machine, where there is a prize or regard given other than automatic replays granted by the machine or except as allowed by F.S. § 849.161(1)(a)1.~~

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Sec. 18-73. Payment of certificate of authorization fee; payment and performance bond; criminal background check and proof of corporate good standing for machine owner or supplier hereunder of type II amusement machines.

A machine owner or supplier of a type II amusement machine shall obtain a certificate of authorization from the city as a non-exclusive franchise for one year by submitting a payment of certificate of authorization fee of \$2,500.00; payment and performance bond, letter of credit, cash or other security acceptable to the city in the amount of \$10,000.00 with the city as the obligee. An amusement center is excused from the bond or security requirement provided herein. An amusement center at one location shall receive a credit for the authorization fee if the amusement center pays a business tax receipt for that location in an amount equal to or in excess of \$9,000.00. Certificates of authorization shall be issued only to corporations in good standing and registered to do business in Florida, limited liability companies in good standing, partnerships in good standing, limited liability partnerships in good standing or limited liability limited partnerships in good standing or individuals. Certificates of authorization shall only be issued to a corporation or partnership where all corporate officers and directors, or partners, as the case may be, and by all stockholders who own, hold or control five percent or more of issued and outstanding stock in the corporation or beneficial interest therein, or individual owners, upon a criminal background check paid by the license-holder reveal that such officers, directors or stockholders of a corporation or corporate general partner; or partners of a partnership within the last five years preceding the application date or renewal date for a certificate of authorization hereunder have not committed a felony or pled guilty or no contest to a felony involving gambling, fraud, theft, or controlled substances; or violation of any criminal law, including misdemeanors, involving the sale, distribution or use of amusement machines or gambling machines. Each year, proof of the renewal or new bond must be provided to the city and certificate of status from the Florida department of state and submission of a background check as described above.

If the machine owner and supplier is the same person or entity, only one fee shall be paid and one bond shall be submitted accordingly. If the machine owner and supplier are different people or entities and the machine supplier, but not the machine owner, intends to lease, place or cause to be placed type II amusement machines within the city, then only the machine supplier shall obtain the certificate of authorization and comply with the requirements herein.

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Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.


Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 24th day of February, 2009.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041

Attest: PRIOR TO FINAL READING Approved on this 25 day of February, 2009.



Rafael E. Granado, City Clerk

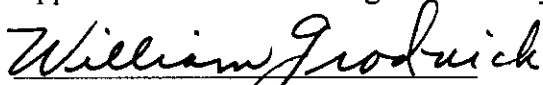


Carlos Hernandez
Council President



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

~~Strikethrough indicates deletion.~~ Underline indicates addition.

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Ordinance was adopted by a 6-0 vote with Councilmembers, Casals-Muñoz, Cue, Gonzalez, Hernandez, Garcia-Martinez, and Yedra voting "Yes" and Councilmember Caragol absent.